

REMARKS

Claims 1-10 and 12-19 were presented for examination in the present application and remain pending for consideration upon entry of the instant amendment. Claims 1, 12, and 17 are independent.

Claim objections and rejections under 35 U.S.C. §112

Claims 1-6, 9-10, 16, and 19 were objected to for various informalities. Similarly, claims 1, 4, and 6-9 were rejected to under 35 U.S.C. §112, second paragraph as being indefinite.

Applicants respectfully traverse these rejections.

Applicants note that the present application has now been the subject of examination by three separate examiners, namely examiner Elizabeth Ann Kinnal issued a first Office Action on November 14, 2008, examiner Christopher Koharski issued a second Office Action on June 23, 2009, and now examiner Nathan Price has issued the present Office Action.

Neither examiners Kinnal nor Koharski found that the present claims included any informalities or indefiniteness as asserted by the present Office Action.

Full faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something. *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 126 F. Supp. 2d 69, 139, 57 USPQ2d 1449, 1499-50 (D. Mass. 2001). Also, piecemeal examination

should be avoided as much as possible. See Manual for Patent Examining Procedure (MPEP) 707.07(g).

Applicants submit request that the informalities and indefiniteness issues raised by the present Office Action are not based on any clear error in the previous actions, and therefore are not proper.

None-the-less, and merely in the interest of expediting prosecution and eliminating any further piecemeal examination of the present application, the claims have been amended to obviate the objections and rejections under 112, second paragraph.

Reconsideration and withdrawal of the objections and rejections under 112, second paragraph are respectfully requested.

Claim rejections under 35 U.S.C. §102

Independent claims 1, 12, and 17, as well as dependent claims 2-10, 13-14, 16, and 18-19, were rejected under 35 U.S.C. §102(b) over newly cited U.S. Patent No. 4,014,463 to Herman (Herman). Dependent claim 15 was rejected under 35 U.S.C. §103(a) over Herman in view of newly cited U.S. Patent No. 4,743,229 to Chu (Chu).

Again, Applicants traverse these rejections and request that the piecemeal examination of the present application cease and that full faith and credit be given to the search and action of the two previous examiners.

Applicants submit that claims 1 is not disclosed or suggested by Herman.

First, independent claim 1 recites, in part, "gas chamber" and a foam producing device "connected with the active agent chamber and the gas chamber". (Emphasis added).

The Office Action asserts that Herman discloses a gas chamber at element 16. However, Herman is directed to the art of dispensing a plurality of fluid materials which, when mixed together, react with each other to produce a desired end product, such as an adhesive, potting compound, sealer, encapsulant or the like. Specifically, Herman discloses, with respect to FIG. 1, shows a dispenser comprising a chamber 10 adapted to contain one of the reactive fluids in liquid form and a second chamber 14 adapted to contain any well known hardener 16 which, when mixed with the resin 12 causes the resin to polymerize and harden. Thus, Applicants submit that Herman lacks a gas chamber as recited by claim 1.

Additionally, claim 1 recites that the first and second pistons are "**displaced in common**" (emphasis added)".

The Office Action asserts that reference numeral 14 of Herman discloses the claimed second piston. Based on this assertion the Office Action concludes that Herman anticipates claim 1. Applicants respectfully submit that this assertion is a mischaracterization of the disclosure in Herman.

Herman discloses that chamber 10 is open at its lower end into which is inserted a piston 18 fitting closely within the side walls of chamber 10. Further, Herman discloses that the dispenser comprises a second chamber 14 that is open at its upper end into which is inserted a piston 36 fitted closely within chamber 14. Thus, Herman clearly discloses that element 36 is a piston, while element 14 is merely a chamber in which the piston 36 is fitted.

Applicants submit that Herman fails to disclose or suggest that piston 36 and piston 18 are "displaced in common" as required by claim 1.

Instead, Herman requires that as the chamber 14 is moved within the chamber 10, its upper end **moves the piston 18** which exerts pressure on the resin 12, while at the same time, the **stop member 42 holds the piston 36** from moving upwardly with the chamber 14 so that piston 36 is forced downwardly with respect to chamber 14. See col. 4, lines 15-35. Accordingly, Herman specifically discloses moving piston 18 downwardly, while using stop member 42 to hold piston 36 in place.

As such, Applicants submit that Herman fails to teach or suggest interconnecting pistons 18, 36 in such a manner that they are displaced in common as required by claim 1. Rather, Herman specifically teaches away from common displacement as required by claim 1.

Moreover, independent claim 1 also requires that "the first and second pistons are **interconnected through a connecting element** which **opens** one of the active agent and gas chambers when it is displaced (emphasis added)".

The Office Action asserts that pistons 18 and 36 of Herman are interconnected by hollow tube 30. Based on this assertion the Office Action concludes that Herman anticipates claim 1. Applicants respectfully submit that this assertion is also a mischaracterization of the disclosure in Herman.

Herman discloses that lower portion of hollow tube 30 passes through the piston 18 which is adapted to slide along tube 30, while stop member 42 secures piston 36 to the tube 30. Thus, Applicants submit that hollow tube 30 of Herman does not interconnect pistons 18 and 36. Rather, Herman specifically discloses that piston 18 merely slides along the tube 30.

Even if one were to assume that the sliding engagement of piston 18 on tube 30 somehow reads on the interconnection required by claim 1, which it does not, Applicants submit that hollow tube 30 of Herman does not "open" either of the chambers as required by claim 1.

Rather, Herman specifically discloses that, during operation of the dispenser, as the chamber 14 is moved within the chamber 10, its upper end moves the piston 18 which exerts pressure on the resin 12. The pressure in turn, is exerted through openings 32 against the sealing disc 26 which flexes to open a passage for the resin 12 around the hollow tube 30.

Thus, Herman clearly discloses that pressure within chamber 14 flexes the sealing disc 26 from a sealed position to open chamber 14. It is clear therefore that the hollow tube 30 cannot be considered a "connecting element" that "opens" the chamber in the manner recited by claim 1.

The Office Action fails to assert that Chu cures any of the aforementioned or other deficiencies of Herman. Accordingly, Herman alone or in combination with Chu fails to disclose or suggest claim 1.

Claim 1, as well as claims 2-10 that depend therefrom, are patentable over the cited art. Reconsideration and withdrawal of the rejection to claims 1-10 over Herman are respectfully requested.

Independent claim 12 is also not disclosed or suggested by the cited art. Rather, Applicants submit that the Office Action has based its rejection on a mischaracterization of Herman.

For example, claim 12 recites, in part, "a **gas chamber**" and "a first piston closing the open top end of the active agent carpule **and** the bottom end of the gas chamber". (Emphasis added).

Applicants submit that Herman merely discloses two liquid chambers and merely discloses that piston 18 closes chamber 12, while piston 36 closes chamber 14. However, Herman simply fails to disclose or suggest that either piston 18, 36 closes both chambers 12, 14 or that either chamber is a gas chamber as required by claim 12.

Further, claim 12 recites that the hollow needle "interconnects the first and second pistons **in common** (emphasis added)".

Applicants submit that Herman merely discloses that lower portion of hollow tube 30 passes through the piston 18 which is adapted to slide along tube 30, while stop member 42 secures piston 36 to the tube 30. Thus, Applicants submit that hollow tube 30 of Herman does not interconnect pistons 18 and 36 "in common" as required by claim 12.

The Office Action fails to assert that Chu cures any of the aforementioned or other deficiencies of Herman. Accordingly, Herman alone or in combination with Chu fails to disclose or suggest claim 12.

Claim 12, as well as claims 13-16 that depend therefrom, are patentable over the cited art. Reconsideration and withdrawal of the rejection to claims 12-16 over Herman are respectfully requested.

Independent claim 17 recites, for example, "**gas chamber**" and "a first piston closing the open top end of the active agent carpule **and** the bottom end of the gas chamber". (Emphasis added).

Again, Applicants submit that Herman merely discloses two liquid chambers and merely discloses that piston 18 closes chamber 12, while piston 36 closes chamber 14. However, Herman simply fails to disclose or suggest that either chamber 12, 14 is a gas chamber or that piston 18, 36 closes both chambers 12, 14.

Further, claim 17 recites that the entrainment element "**maintains a distance between the first and second pistons** (emphasis added)".

Instead, Herman requires that as the chamber 14 is moved within the chamber 10, its upper end **moves the piston 18** which exerts pressure on the resin 12, while at the same time, the **stop member 42 holds the piston 36** from moving upwardly with the chamber 14 so that piston 36 is forced downwardly with respect to chamber 14. See col. 4, lines 15-35.

Accordingly, Herman specifically discloses moving piston 18 downwardly, while using stop member 42 to hold piston 36 in place so that the distance between the two pistons continually increases.

The Office Action fails to assert that Chu cures any of the aforementioned or other deficiencies of Herman. Accordingly, Herman alone or in combination with Chu fails to disclose or suggest claim 17.

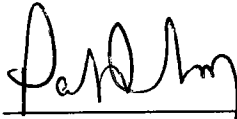
Claim 17, as well as claims 18-19 that depend therefrom, are patentable over the cited art. Reconsideration and withdrawal of the rejection to claims 17-19 over Herman are respectfully requested.

Summary

In view of the above, it is respectfully submitted that the present application is in condition for issuance. Such action is solicited.

If for any reason the Examiner feels that consultation with Applicants' attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul D. Greeley', is written over a horizontal line.

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Paul D. Greeley, Esq.
Registration No. 31,019
Attorney for Applicant(s)
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
One Landmark Square, 10th floor
Stamford, CT 06901-2682
Tel: (203) 327-4500
Fax: (203) 327-6401